

MF 01-14

Tax Type: Motor Fuel Use Tax

Issue: Dyed/Undyed Diesel Fuel (Off Road Usage)

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPRINGFIELD, ILLINOIS**

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THE DEPARTMENT OF REVENUE	)	
OF THE STATE OF ILLINOIS	)	
	)	<b>Docket No. 00-ST-0000</b>
v.	)	<b>Acct # DP-000000</b>
	)	<b>NTL # 43-000000 P</b>
"THE KIELBASA COMPANY"	)	
	)	
Taxpayer	)	

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**RECOMMENDATION FOR DISPOSITION**

**Synopsis:**

The Department of Revenue ("Department") issued a Notice of Penalty for Motor Fuel Tax to the "Kielbasa Company" ("taxpayer"). The Notice, which assessed a \$5,000 penalty, alleged that the taxpayer sold or attempted to sell dyed diesel fuel for use on highways. The taxpayer timely protested the Notice. The parties filed a joint stipulation of facts along with motions for summary judgment and briefs in support of their positions. After reviewing the documentation presented, it is recommended that the Department's motion for summary judgment be granted.

**FINDINGS OF FACT:**

1. The taxpayer is a [State] corporation that distributes fuel in Missouri and in Illinois. The taxpayer is registered to distribute fuel in Illinois. (Stip. #1)

2. On July 14, 2000, the Department issued a Notice of Penalty for Motor Fuel Tax in the amount of \$5,000. The Notice states that on June 14, 2000 the taxpayer sold or attempted to sell dyed diesel fuel for use on highways. (Stip. #2)

3. The dyed diesel fuel at issue was sold by the taxpayer to Bi-State Development Agency (“Bi-State”). (Stip. #4)

4. Bi-State specifically ordered red-dyed fuel from the taxpayer. (Stip. #5)

5. Bi-State previously had an exemption for the purchase and use of red-dyed fuel. The exemption was rescinded in January 2000. Bi-State did not notify the taxpayer that the contractual requirement to supply red-dyed fuel was illegal and invalid. (Stip. #6)

**CONCLUSIONS OF LAW:**

Paragraph 16 of section 15 of the Motor Fuel Tax Act (Act) (35 ILCS 505/1 *et seq.*), which became effective January 1, 2000, provides in part as follows:

“16. Any licensed motor fuel distributor or licensed supplier who sells or attempts to sell dyed diesel fuel for highway use shall pay the following penalty:

First	occurrence.....	\$
5,000		
Second and each occurrence thereafter.....	\$10,000	

(35 ILCS 505/15). The taxpayer contends that the \$5,000 penalty should not be imposed because the taxpayer did not know that the sale of dyed diesel fuel to Bi-State was illegal. The taxpayer argues that although Bi-State should have known that the sale was prohibited, it did not inform the taxpayer of the change in the law. The taxpayer claims that it was not negligent in making the sale. Also, the taxpayer argues that no purpose

would be served by imposing the penalty because the taxpayer is now aware that the sale is prohibited and does not need to be deterred from making these sales in the future. Although the Department states that it sent notice of the change in the law to all registered distributors of motor fuel, the taxpayer states that it did not receive notice of the change. The taxpayer claims that because it reasonably relied on Bi-State's request for dyed diesel fuel and did not know the request was unlawful, the penalty should not be imposed.

Department notes that it is undisputed that the taxpayer sold dyed diesel fuel to Bi-State for highway use, which requires imposition of the penalty. The Department contends that nothing in the statute allows for the abatement of the penalty due to reasonable cause. The Department simply states that the penalty should be upheld because there is no authority to waive it.

As the Department has indicated, nothing in the statute allows for the abatement of the penalty if the taxpayer shows reasonable cause for the failure to comply with the law. The taxpayer is a licensed motor fuel distributor who sold dyed fuel for highway use. This action on the part of the taxpayer requires the imposition of the penalty. Even though the taxpayer was unaware of the change in the law, the taxpayer still had the duty to follow the newly enacted provision. The taxpayer's reliance on Bi-State's request for the fuel does not eliminate the taxpayer's need to comply with the law.

**Recommendation:**

For the foregoing reasons, it is recommended that the Department's motion for summary judgment be granted, the taxpayer's motion for summary judgment be denied, and the penalty be upheld.

Enter: April 18, 2001

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Administrative Law Judge